

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JAMIE LEONARD,

Plaintiff,

v.

**ST. CHARLES COUNTY, STEVEN
HARRIS, DONTE FISHER, LISA
BAKER, and THERESA MARTIN,**

Defendants.

Case No. 4:19-cv-00927-MTS

**PLAINTIFF JAMIE LEONARD'S STATEMENT OF ADDITIONAL MATERIAL
FACTS IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

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SUMMARY JUDGMENT ADDITIONAL FACT EXHIBIT LIST AS OF MAY 20, 2021*Jamie Leonard v. St. Charles County, et al.*

Case Number: 4:19-cv-00927-MTS

Honorable Matthew T. Schelp

Plaintiff's Attorneys: Thomas R. Applewhite, Steven A. Donner, Gary K. Burger

Defendants' Attorneys: Drew A. Heffner, Bryan E. Wise

	<u>PLAINTIFF'S EXHIBITS</u>	
EXH #	DESCRIPTION OF EXHIBIT	ORIGIN
13	Supplemental Deposition Transcript Selections of Theresa Martin	Deposition
17	Supplemental Deposition Transcript Selections of Katie Garofalo	Deposition
24a	Supplemental Deposition Transcript Selections of Donte Fisher on 8/23/19	Deposition
24b	Supplemental Deposition Transcript Selections of Deposition of Donte Fisher on 2/11/20	Deposition
25a	Supplemental Deposition Transcript Selections of Deposition of Steven Harris on 8/23/19	Deposition
25b	Supplemental Deposition Transcript Selections of Deposition of Steven Harris on 2/5/20	Deposition
27	Selections from SCCDOC's Use of Force Policy, Originally from Plaintiff's Statement of Uncontroverted Material Facts in Support of	Defendants' Bates 1226-1229
39	Supplemental Declaration of Jamie Leonard	Plaintiff Jamie Leonard

Plaintiff, Jamie Leonard (hereinafter, “Mr. Leonard”) incorporates herein by reference his Statement of Uncontroverted Material Facts in Support of Plaintiff’s Motion for Summary Judgment. *See* Doc. 101. Plaintiff does not restate what is already contained in that filing. Mr. Leonard makes the following Additional Statement of Additional Material Facts in Opposition to Defendants’ Motion for Summary Judgment [Doc. 92]:

I. ADDITIONAL ADMISSIONS FROM DEFENDANTS’ ANSWER

1. Informational documents provided to the employees of the St. Charles County Department of Corrections (hereinafter, “St. Charles”) state that the following may result from the use of O.C. spray for approximately 30-45 minutes:

(a) a painful burning sensation in the eyes, involuntary eye closure, profound tearing, visual impairment, and protracted redness; and

(b) psychological effects, such as fear, anxiety and possible panic.

[The above subsections (a) and (b) are hereinafter referred to as the “Described Effects of Pepper Spray”.] *See* Answer from 4/29/21, ¶ 121 (ECF No. 91).

2. Per William S. Forness, RN, from SSM Health St. Joseph Hospital in St. Charles, Missouri, later in the morning after the event of Mr. Leonard attempting to pull out his left eye:

“According to CO’s that are with him he was banging his head on the floor and the bars of the jail and trying to pull out his left eye, he had been prying at his eye. Until they noticed that it was bleeding and they realized that it was partially removed from the socket and they sent him here.”

See Answer from 4/29/21, ¶ 163 (ECF No. 91).

3. It would have taken less than one minute for Defendant Fisher to have learned about Mr. Leonard's eye condition and his mental health issues had he not already known about them. *See Answer from 4/29/21, ¶ 116 (ECF No. 91).*

II. ADDITIONAL STATEMENTS FROM DEFENDANT FISHER

4. One precautionary measure that Defendant Fisher did not take when searching Mr. Leonard's cell on July 22, 2017 was to handcuff Mr. Leonard to the back wall of his cell. *See Supplemental Exhibit 24b – Fisher Depo., 2/11/20, 55:24 to 56:4.*

5. A Nova shield would have been a good protective tool that could have functioned as an alternative to pepper spray when Mr. Leonard's cell was searched on July 22, 2017. *See Supplemental Exhibit 24a – Fisher Depo., 8/23/19, 59:12-19, 60:15 to 61:14.*

6. Defendant Fisher believed that a Nova shield would have been a perfect tool to use on July 22, 2017 because the shield would have given all types of deterrents to Mr. Leonard. *See Supplemental Exhibit 24a – Fisher Depo., 8/23/19, 61:5-14.*

7. Defendant Fisher could have procured alternative lethal weapons prior to entering Mr. Leonard's cell on July 22, 2017 by walking three to four minutes to St. Charles' armory. *See Supplemental Exhibit 24a – Fisher Depo., 8/23/19, 61:18 to 62:19.*

8. St. Charles had three or four Nova shields in its armory on August 23, 2019. *See Supplemental Exhibit 24a – Fisher Depo., 8/23/19, 71:24 to 72:2.*

9. The MK-9 pepper spray fogger could have been used prior to searching Mr. Leonard's cell back on July 22, 2017 without the risk of the needling effect. *See Supplemental Exhibit 24a – Fisher Depo., 8/23/19, 69:20 to 70:18.*

10. For a planned use of force, Defendant Fisher taught Defendant Harris that he was supposed to get medical information on the inmate prior to using pepper spray. *See Supplemental Exhibit 24a – Fisher Depo., 8/23/19, 8:18-23.*

11. At Defendant Fisher's briefing with Kristian Scott and Steven Harris prior to searching Mr. Leonard's cell on July 22, 2017, Defendant Fisher informed them that Mr. Leonard had been acting strange and that they might need to be cautious in dealing with Mr. Leonard before they entered the cell for searches. *See Supplemental Exhibit 24b – Fisher Depo., 2/11/20, 18:4-9.*

12. On August 23, 2019, Defendant Fisher believed that a planned use of force includes accessing the cell of an agitated inmate who is already inside of his cell. *See Supplemental Exhibit 24a – Fisher Depo., 8/23/19, 20:13-24.*

13. Officers are able to see into each of the cells from anywhere in Housing Unit A. *See Supplemental Exhibit 24a – Fisher Depo., 8/23/19, 30:16-18.*

14. There are only five cells in Housing Unit A. *See Supplemental Exhibit 24a – Fisher Depo., 8/23/19, 32:20-22.*

III. ADDITIONAL STATEMENTS FROM DEFENDANT HARRIS

15. Defendant Harris had access to either riot shields or taser shields through St. Charles at the time of the use of force incident. *See Supplemental Exhibit 25a – Harris Depo., 8/23/19, 33:13-14.*

16. Defendant Harris has been trained in multiple types of nonlethal force other than O.C. spray. *See Supplemental Exhibit 25a – Harris Depo., 8/23/19, 37:13 to 38:1.*

17. Defendant Harris had undergone multiple years of martial arts training prior to July 22, 2017. *See Supplemental Exhibit 25a – Harris Depo., 8/23/19, 12:20 to 13:3.*

18. Defendant Harris is skilled in pressure point control tactics. See Supplemental Exhibit 25a – Harris Depo., 8/23/19, 12:13-14 and 44:8-10.

19. Pressure point control tactics allow a person to strike major muscle areas or apply pressure to nerve motor points to control resistive behavior. See Supplemental Exhibit 25b – Harris Depo., 2/5/20, 27:8-13.

20. Per St. Charles' use of force policy, as shown in Mr. Leonard's Summary Judgment Exhibit 27, pressure point control tactics are a lesser use of force than pepper spray on the use of force continuum. See Supplemental Exhibit 25b – Harris Depo., 2/5/20, 55:14-23; Exhibit 27 – Defendants' Bates 1227.

21. As of February 5, 2020, Defendant Harris believed that pepper spray was considered a lesser use of force than pressure point control tactics. See Supplemental Exhibit 25b – Harris Depo., 2/5/20, 55:24 to 56:7,16-19 to 57:3.

22. Defendant Harris has personal knowledge that being sprayed in the face with pepper spray affects an inmate's mucous membranes so inmates feel a burning sensation on their lips, through their nostrils, and their eyes, and any sensitive portion of their skin will start to burn. See Supplemental Exhibit 25a – Harris Depo., 8/23/19, 44:24 to 45:11.

23. For inmates who have schizophrenia or are under the influence of narcotics, officers are supposed to keep directives simple and not immediately rush into conflict if the inmate is not immediately responsive so long as that inmate is not a danger to himself or others. See Supplemental Exhibit 25a – Harris Depo., 8/23/19, 49:13-22 and Supplemental Exhibit 25b – Harris Depo., 2/5/20, 43:8-11.

24. Defendant Harris was trained to have more patience with inmates who are schizophrenic, might be suicidal or have strange behavior. *See Supplemental Exhibit 25b – Harris Depo., 2/5/20, 42:6-11.*

25. St. Charles did not teach Defendant Harris much in the ways of talking to individuals with mental health and cognitive impairment issues. *See Supplemental Exhibit 25a – Harris Depo., 8/23/19, 54:6-21.*

26. People under the influence of drugs and people with mental health conditions are two of the four statistically high-risk groups that jails hold. *See Supplemental Exhibit 25a – Harris Depo., 8/23/19, 59:19 to 60:1.*

27. Defendant Harris was told that there was no problem with pepper spraying Mr. Leonard by Donte Fisher. *See Supplemental Exhibit 25b – Harris Depo., 2/5/20, 50:3-4.*

28. Defendant Harris sprayed Mr. Leonard in the face to prevent him from exiting his cell, not to prevent him from being attacked. *See Supplemental Exhibit 25b – Harris Depo., 2/5/20, 32:4-22, 51:10-21.*

29. Defendant Harris knew that spraying an inmate in the face can affect that inmate's eyes for up to two hours. *See Supplemental Exhibit 25b – Harris Depo., 2/5/20, 32:25 to 33:4.*

30. Mr. Leonard was still washing his eyes out when Defendant Harris departed from him on July 22, 2017 after spraying him in the face with pepper spray. *See Supplemental Exhibit 25b – Harris Depo., 2/5/20, 82:6-8.*

31. Defendant Harris did not document that he left Kristian Scott in charge of Mr. Leonard's pepper spray aftercare in violation of St. Charles' policy. *See Supplemental Exhibit 25b – Harris Depo., 2/5/20, 85:22-24, 90:14-25.*

IV. ADDITIONAL STATEMENTS FROM FORMER DEFENDANT GAROFALO

32. Going hands on with Mr. Leonard would have been effective on Mr. Leonard. *See Supplemental Exhibit 17 – Garofalo Depo., 36:7-10.*

33. Officer Garofalo has contacted St. Charles' medical staff before to determine appropriate uses of force on an inmate. *See Supplemental Exhibit 17 – Garofalo Depo., 53:14-16.*

34. As of February 26, 2020, Officer Garofalo believed that that individuals without mental health issues, with mental health issues and inmates in the suicide prevention unit should be treated the same with respect to the use of pepper spray. *See Supplemental Exhibit 17 – Garofalo Depo., 45:7-12.*

35. As of February 26, 2020, Officer Garofalo believed that that it is acceptable to spray an inmate with pepper spray one inch away from the inmate's eye. *See Supplemental Exhibit 17 – Garofalo Depo., 46:19-21.*

V. ADDITIONAL STATEMENTS FROM DEFENDANT MARTIN

36. Between 6:45 am on July 22, 2017 and when Defendant Martin arrived when Mr. Leonard was attempting to remove his eyeball from his eye socket, Defendant Martin did not ask any St. Charles employee whether Mr. Leonard's eye irritation from being pepper sprayed had improved, worsened, or stayed the same. *See Supplemental Exhibit 13 – Martin Depo., 49:5-14.*

37. Defendant Martin was able to request that Mr. Leonard be placed in a restraint chair on July 21, 2017 or July 22, 2017 prior to Mr. Leonard attempting to remove his eyeball from his eye socket. *See Supplemental Exhibit 13 – Martin Depo., 65:7-15.*

38. The best and smartest practice in a suicide prevention unit in a prison is for the prison's guards to attempt to stop a suicide or self-harm attempt by an inmate as quickly as

possible, even if medical staff are not yet present. *See Supplemental Exhibit 13 – Martin Depo., 25:1-7, 13-22.*

39. When Defendant Martin was called over to the suicide prevention unit on July 22, 2017 to respond to Mr. Leonard attempting to injure his eye, there were at least four or five St. Charles' employees in the hall outside of Mr. Leonard's cell. *See Supplemental Exhibit 13 – Martin Depo., 15:13-18.*

40. From the time Defendant Martin arrived at the suicide prevention unit on July 22, 2017 to respond to Mr. Leonard attempting to injure his eye and prior to Mr. Leonard actually removing his eyeball from his eye socket, no one attempted to constrain Mr. Leonard or trying to prevent Mr. Leonard from hurting himself. *See Supplemental Exhibit 13 – Martin Depo., 15:2-7.*

41. It was surprising to Defendant Martin that St. Charles' employees had not tried to prevent Mr. Leonard from self-harming his eye during the time that Mr. Leonard was attempting to self-harm his eye in her presence on July 22, 2017. *See Supplemental Exhibit 13 – Martin Depo., 16:1-3.*

42. The St. Charles employees present at the time that Defendant Martin was coming down the hall to Mr. Leonard's cell to respond to Mr. Leonard's self-harm attempt on July 22, 2017 could see Mr. Leonard's self-harm attempt through the window of Mr. Leonard's cell door. *See Supplemental Exhibit 13 – Martin Depo., 17:10-14, 15:13-17.*

43. Defendant Martin believed that a sufficient number of St. Charles' employees were present during Mr. Leonard's self-harm attempt on July 22, 2017 to have safely entered Mr. Leonard's cell prior to Mr. Leonard removing his eyeball from his eye socket. *See Supplemental Exhibit 13 – Martin Depo., 17:17 to 18:4.*

VI. ADDITIONAL STATEMENTS FROM PLAINTIFF JAMIE LEONARD

44. Jamie Leonard was not a prisoner or detained by the St. Charles County Department of Corrections when the above-captioned lawsuit was filed on April 16, 2019. *See Exhibit 39 – Leonard Decl., ¶ 4.*

VII. FILING DATE OF LAWSUIT

45. This Court may take judicial notice that this lawsuit was filed on April 16, 2019.

Date: May 20, 2021

Respectfully submitted by,

**DONNER APPLEWHITE,
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CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2021, the foregoing was filed utilizing this Court's ECF system, which will distribute an electronic version of the foregoing to all counsel of record.

/s/ Thomas R. Applewhite